

**CONTRACT #1**

**RFS # N/A**

**Tennessee Board of Regents  
Middle Tennessee State  
University**

**VENDOR:**

**Alexander, Haas, Martin and  
Partners, Inc.**



## Tennessee Board of Regents

1415 Murfreesboro Road - Suite 350 - Nashville, Tennessee 37217-2833  
(615) 366-4400 FAX (615) 366-4464

November 10, 2008

Ms. Leni S. Chick  
Fiscal Analyst  
Rachel Jackson Building, 8<sup>th</sup> Floor  
Nashville, TN 37243

RECEIVED

NOV 13 2008

FISCAL REVIEW

Dear Ms. Chick:

Enclosed please find an Agreement with Alexander Haas Martin & Partners providing for comprehensive campaign and fund raising consulting in support of Middle Tennessee State University's efforts to conduct a major fund raising initiative related to its upcoming Centennial celebration. Please note that this Agreement will be for a potential five (5) year term. A representative from Middle Tennessee State University will be attending the meeting.

Per Fiscal Review's request to see non-competitive agreements/amendments, this contract must be approved by the Committee. **Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the representatives to insure they are present for the meeting in which the contract will be discussed.** If you have any questions, please do not hesitate to contact me at 366-4436.

Information regarding the contract may be sent to my attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217.

Sincerely,

Angela A. Gregory  
Director of Purchasing and Contracts

cc: Charles Manning  
Bob Adams  
Janine Brink, MTSU

Austin Peay State University • East Tennessee State University • Middle Tennessee State University • Tennessee State University  
Tennessee Tech University • University of Memphis • Chattanooga State Technical Community College  
Cleveland State Community College • Columbia State Community College • Dyersburg State Community College  
Jackson State Community College • Motlow State Community College • Pellissippi State Technical Community College  
Roane State Community College • Southwest Tennessee Community College • Volunteer State Community College  
Walters State Community College • Nashville State Technical Community College • Northeast State Technical Community College  
The Tennessee Technology Centers

**Office of the President**

Middle Tennessee State University  
110 Cope Administration Building  
Murfreesboro, Tennessee 37132  
615-898-2622  
FAX: 615-898-2507



October 30, 2008

Dr. Charles W. Manning  
Chancellor  
Tennessee Board of Regents  
1415 Murfreesboro Road  
Suite 350  
Nashville, TN 37217-2833

Dear Dr. Manning:

Enclosed you will find the appropriate forms and documentation requesting approval for a non-competitive contract with Alexander, Haas, Martin and Partners (AHMP) of Atlanta, GA to provide comprehensive campaign and fund raising consulting in support of our efforts to conduct a major fund raising initiative related to our upcoming Centennial celebration. As you know, our development program has grown steadily over the past few years; and we have positioned ourselves to take advantage of the unique opportunity the Centennial provides.

Alexander, Haas, Martin and Partners is a very familiar firm to universities in Tennessee and currently has active relationships with both the University of Tennessee and Tennessee Board of Regents systems. Our request for approval is based on our belief that AHMP is the only firm that can provide the services to meet our needs and provide them in a timely and cost effective manner. I would call your attention to these key issues which are further detailed in our request.

- We have been conducting advance planning and positioning for a Centennial fund raising event for the past few years. Our original intent was to conduct a feasibility study and launch the quiet phase for our campaign in the fall of 2007, providing us with the 3-4 years typically associated with this phase of a Campaign. However, the unfortunate events of last summer, involving one of our alumni and his financial activities, as well as the resulting legal issues, forced us to delay our plans for nearly 18 months. Accordingly we have lost valuable time that can not be recouped or replaced.
- In anticipation of a Centennial campaign, in 2006 we selected AHMP to conduct a program assessment and operational review of our advancement and foundation activities. As a result of this 12 month review, AHMP is fully familiar with our staff, many of our Foundation Board members and donors, and our institutional capabilities. They would be able to immediately begin to direct and coordinate our efforts, with no



October 30, 2008

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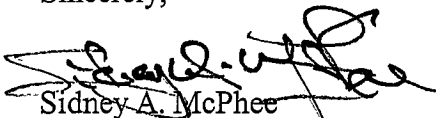
need to do the extensive background work and evaluation another firm would be required to perform.

- In addition, AHMP's current engagement with both the UT and TBR systems provides them with a familiarity with both the philanthropic activity in Tennessee and a high degree of credibility with many of the major funding resources. They would not have to establish new relationships to support our efforts, again saving valuable time and money.
- Finally, the firm's current engagements in the state allow us to capitalize on the opportunity to share expenses among multiple institutions, resulting in considerable savings to our institution, as well as our fellow in-state institutions. Efforts would be made, whenever possible, to coordinate trips and site visits for AHMP personnel with our peer institutions. Recognizing that AHMP's leading peers, who would likely compete for this contract, are in Dallas, Chicago, Minneapolis, Washington and Los Angeles, this ability to share expenses and reduce travel costs should result in significant savings.

It is my belief that this represents the best possible use of time and money and is in the overall best interest of the University. After reviewing the attached materials I am requesting your approval for a non-competitive award to Alexander, Haas, Martin and Partners.

Thank you for your consideration of our request.

Sincerely,



Sidney A. McPhee  
President

# Supplemental Documentation Required for Fiscal Review Committee

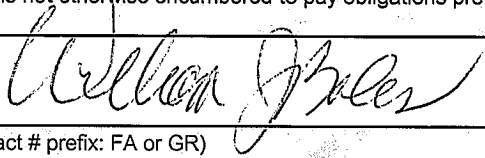
*Contact Name:	William J. Bales		*Contact Phone:	615-898-5818	
*Contract Number:			*RFS Number:		
*Original Contract Begin Date:	1/1/2009		*Current End Date:	12/31/2011	
Current Request Amendment Number: <i>(if applicable)</i>			N/A		
Proposed Amendment Effective Date: <i>(if applicable)</i>			N/A		
*Department Submitting:			Middle Tennessee State University		
*Division:			Development and University Relations		
*Date Submitted:			11/12/08		
*Submitted Within Sixty (60) days:			No		
<i>If not, explain:</i>			Time needed to acquire all approval signatures and contract documentation was more than originally anticipated.		
*Contract Vendor Name:			Alexander Haas Martin & Partners, Inc.		
*Current Maximum Liability:			\$420,000		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:2009-10	FY:10-11	FY:11-12	FY:	FY:	FY:
\$140,000	\$1,40,000	\$140,000			\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding Source/Amount:	State:	\$420,000	Federal:		
Interdepartmental:			Other:		

# Supplemental Documentation Required for Fiscal Review Committee

If “ <i>other</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A		N/A	
Method of Original Award: <i>(if applicable)</i>		N/A	

# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>				<b>Contract #</b>			
<b>State Agency</b>				<b>State Agency Division</b>			
Middle Tennessee State University				University Administration			
<b>Contractor Name</b>				<b>Contractor ID # (FEIN or SSN)</b>			
Alexander Haas Martin & Partners, Inc.				<input type="checkbox"/> C- or <input type="checkbox"/> V-			
<b>Service Description</b>							
Agreement to provide comprehensive fundraising and campaign consulting for the University.							
<b>Contract BEGIN Date</b>		<b>Contract END Date</b>		<b>Subrecipient or Vendor?</b>		<b>CFDA #</b>	
1/1/2009		12/31/2011		Vendor			
<b>Mark Each TRUE Statement</b>							
<input type="checkbox"/> Contractor is on STARS				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
<b>Allotment Code</b>		<b>Cost Center</b>		<b>Object Code</b>		<b>Fund</b>	
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>		
2009-10	\$ 140,000.00				\$ 140,000.00		
2010-11	\$ 140,000.00				\$ 140,000.00		
2011-12	\$ 140,000.00				\$ 140,000.00		
					\$ -		
					\$ -		
					\$ -		
<b>TOTAL:</b>	\$ 420,000.00	\$ -	\$ -	\$ -	\$ 420,000.00		
<b>— COMPLETE FOR AMENDMENTS ONLY —</b>				<b>State Agency Fiscal Contact &amp; Telephone #</b>			
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	William J. Bales, 615-898-5818  State Agency Budget Officer Approval  VP for Development and University Relations  <b>Funding Certification</b> (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)				
							
<b>TOTAL:</b>	\$ -	\$ -					
<b>End Date</b>							
<b>Contractor Ownership</b> (complete only for base contracts with contract # prefix: FA or GR)							
<input type="checkbox"/> African American		<input type="checkbox"/> Person w/ Disability		<input type="checkbox"/> Hispanic		<input type="checkbox"/> Small Business <input type="checkbox"/> NOT disadvantaged	
<input type="checkbox"/> Asian		<input type="checkbox"/> Female		<input type="checkbox"/> Native American		<input type="checkbox"/> OTHER minority/disadvantaged—	
<b>Contractor Selection Method</b> (complete for ALL base contracts— N/A to amendments or delegated authorities)							
<input type="checkbox"/> RFP		<input type="checkbox"/> Competitive Negotiation		<input type="checkbox"/> Alternative Competitive Method			
<input checked="" type="checkbox"/> Non-Competitive Negotiation		<input type="checkbox"/> Negotiation w/ Government(eg,ID,GG,GU)		<input type="checkbox"/> Other			
<b>Procurement Process Summary</b> (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)							

# REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration  
Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #		
2) State Agency Name :	Middle Tennessee State University	
3) Service Caption :		
4) Proposed Contractor :	Alexander Haas Martin & Partners	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	01/01/09 – 12/31/11	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	12/31/13	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	Final year cost - \$660,000	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	Agreement to advise and develop fundraising campaign plan for the University.	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	<p>The University desires to conduct a major fundraising campaign effort in conjunction with its 100th anniversary, culminating in 2011. Current staff resources are limited due to long term budgetary constraints and we require the assistance of outside counsel who can provide needed services during the campaign period without significantly increasing commitments to permanent personnel or budgets.</p>	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	<p>The University previously retained external counsel for their New Century/New Visions Campaign, conducted from 1996-2001. Utilized Ketchum, Inc. of Dallas, TX to provide consulting services for the Campaign. Vendor was selected by previous institutional and foundation leadership through a competitive process</p> <p>The most recent activity with AHMP was in 2006-07 through a competitively procured contract by the University. AHMP was selected after a review of potential providers of this service and selected based on their experience, familiarity with educational philanthropy in Tennessee and value. At that time, AHMP performed a comprehensive program review of all advancement and Foundation operations, focusing on business practices and operational procedures. Their review led to a number of recommendations for consideration. Many of these have been or are currently being implemented. Additionally their recommendations and final reports were developed after extensive personal interviews and surveys, and represent their interpretation of the information collected. In order to effectively provide counsel, an alternative vendor would need to assess our current capabilities and programs; this would likely require them to redo work previously completed by AHMP to gain a complete understanding of our activities and operational procedures.</p>	



**12) Name & Address of the Proposed Contractor's Principal Owner(s) :** (not required if proposed contractor is a state education institution)

Alexander Haas Martin & Partners, Inc. , 3520 Piedmont Road NE, Suite 300, Atlanta, GA 30305-1512.

**13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :**

AHMP has more than 50 years experience in philanthropic counsel and has worked for hundreds of public and private institutions (a full list of clients is on their web site [www.ahmp.com](http://www.ahmp.com)) in conducting many fundraising initiatives. While a nationally recognized firm, they focus much of their efforts in the Southeast and are very familiar with the fundraising environment and culture of the area. They have supported a number of clients in Tennessee and currently have contractual relationships with both UT and Tennessee Tech University.

AHMP has a leadership team that has worked both as active institutional fundraisers and consultants. Their expertise covers a number of peer institutions in Tennessee as well as regional peers such as Western Kentucky and Louisiana Monroe, as well as aspirational peers like the University of Louisville and the University of North Carolina - Charlotte.

**14) Documentation of Office for Information Resources Endorsement :**  
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

**15) Documentation of Department of Personnel Endorsement :**  
(required only if the subject service involves training for state employees)

select one:

☐

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

**16) Documentation of State Architect Endorsement :**  
(required only if the subject service involves construction or real property related services)

select one:

☐

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

**17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

The current staff of the Development Office consists of 7 professional positions supporting a wide array of college based initiatives. The majority of the staff has less than 5 years experience in university advancement and with the exception of the Vice President for Development, none have major campaign experience. Additionally, the staff currently does not have individuals with professional experience in campaign management, charitable strategy development or deferred giving - all key components of a major fundraising campaign. Outside assistance is needed to help address issues, like planned and estate gifts, donor strategy development, etc. and can be achieved with one-time or term allocations, minimizing the impact on long term budgets.

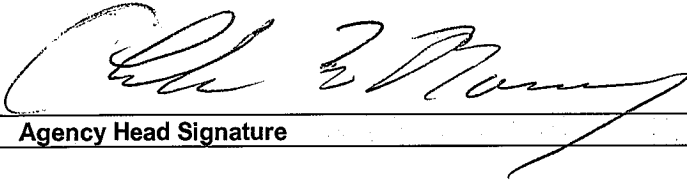
**18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :**  
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

AHMP currently has active contracts with both the University of Tennessee and with the TBR system, via Tennessee Tech University. While the contracts are similar in their overall function, because each institution's needs vary due to size and the exact activity being offered, i.e. UT may require more direct assistance with their campaign activity, while Tennessee Tech may still be in an assessment stage, it is impossible to duplicate exactly the same services and costs. However, as AHMP has been fully vetted by both systems and has demonstrated their ability to deliver the expected outcomes in a timely, cost efficient manner, they comply with our efforts to utilize service providers of the highest reputation and value. Their established reputation in the region provides immediate credibility for our efforts; and their active relationships in Tennessee and the Southeast should provide access to new avenues of funding to our institution.

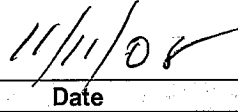
Due to circumstances outside our control, our original plans and efforts were significantly impacted and we lost valuable time in our campaign efforts. To assure that we fully capitalize on the opportunity that our upcoming Centennial offers, it is imperative that we begin our actual efforts as quickly as possible. AHMP is the only firm that can "hit the ground running" and can provide direction and consultation that can immediately impact our program. Should a formal bid process be required, we will lose another 3-4 months in the actual process (recognizing that the December holiday will add to the normal bid time). Additionally, should another vendor be awarded the contract, it would take them 6-9 months of additional time to do a thorough program and donor evaluation, in order to provide the most appropriate level of consultation and service. As noted previously, our Centennial is approaching in 2011 and the additional 9-12 months required to bring an alternative vendor up to speed and functioning effectively does not, due to the aforementioned legal situation with one of our leading donors, allow ample time to conduct our efforts in a timely manner.

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

A handwritten signature in cursive script, appearing to read "Ch E. Manning", written in black ink.

Agency Head Signature

A handwritten date "11/11/08" in black ink.

Date



**CONTRACT BETWEEN**  
**MIDDLE TENNESSEE STATE UNIVERSITY**  
**AND**  
**ALEXANDER HAAS MARTIN & PARTNERS, INC.**

This Contract, by and between **Middle Tennessee State University**, hereinafter referred to as the "Institution" and **Alexander Haas Martin & Partners, Inc.**, hereinafter referred to as the "Contractor," is for the purpose of providing comprehensive fundraising and campaign consulting for the Institution, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation. The Contractor's address is: 3520 Piedmont Road, N.E. Suite 300, Atlanta, GA 30305-1512.

**A. SCOPE OF SERVICES:**

**A.1. A. Scope of Services**

Provide comprehensive fund raising and campaign consulting for the University while developing a major philanthropic initiative associated with the Institution's centennial celebration in 2011. Services provided will include on-site consultation, campaign and promotional materials development, donor assessment, solicitation strategies and staff/volunteer training. Additional services include program and operational review for institutional programs and areas not covered in the program assessment conducted in 2006-07.

**B. CONTRACT TERM:**

**B.1. Contract Term.** This Contract shall be effective for the period commencing on January 1, 2009 and ending on December 31, 2011. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**B.2. Term Extension.** The Institution reserves the right to extend this Contract for two additional periods of twelve months each for a total contract term of no more than five (5) years, provided that the Institution notifies the Contractor in writing of its intention to do so at least ninety (90) days prior to the Contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original Contract.

**C. PAYMENT TERMS AND CONDITIONS:**

**C.1. Maximum Liability.** In no event shall the maximum liability of the Institution under this Contract exceed Four Hundred Twenty Thousand Dollars (\$420,000). The maximum liability amount is inclusive of reimbursement for actual, documented, out-of-pocket travel subject to the limitations specified in Section C.4. The Service Rates in Section C.3 include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs satisfactory work.

**C.2. Compensation Firm.** The Service Rates and the Maximum Liability of the Institution under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless the Contract is amended.

**MIDDLE  
TENNESSEE**  
STATE UNIVERSITY

- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

Year One – Fee of \$14,000 per month for the first phase of the campaign not to exceed \$84,000 or six months. Fee of \$10,000 per month for the second phase not to exceed \$60,000 or six months.

Years Two and Three – Fee of \$8,000 to \$10,000 per month depending on the level of support needed as determined by the Institution.

The Contractor shall submit monthly invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation.

Compensation to the Contractor for travel, meals and/or lodging in connection to work performed under this Contract shall be in the amount of actual cost to the Contractor, subject to the maximum amounts and limitations specified in the Tennessee Board of Regents Policies, as they may be from time to time amended.

- C.5. Payment of Invoice. The payment of the invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

- C.7. Deductions. The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the Institution any amounts which are or shall become due and payable to the Institution by the Contractor.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials in accordance with applicable Tennessee state laws and regulations.
- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. Termination for Convenience. The Institution may terminate this Contract without cause for any reason. Such termination shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any

**MIDDLE  
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actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.5. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.7. and D.8.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.7. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.8. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or Tennessee constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Records. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, quarterly progress reports to the Institution if requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

**MIDDLE  
TENNESSEE**  
STATE UNIVERSITY

The Contractor, being an independent contractor and not an employee of the Institution, agrees to carry adequate liability and other appropriate forms of insurance, including workers' compensation coverage as required by applicable law on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- D.16. Institution and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Communications and Contacts.

The Institution:

William J. Bales, VP for Development and University Relations  
Middle Tennessee State University  
P.O. Box 125  
Wood-Stegall Center  
Murfreesboro, TN 37132  
PH 615-898-5818  
Fax 615-898-3345  
jbales@mtsu.edu

The Contractor:

David T. Shufflebarger, CFRE  
Managing Partner  
Alexander Haas Martin & Partners, Inc.  
3520 Piedmont Road N.E.  
Suite 300  
Atlanta, GA 30305-1512  
PH 404-525-7575  
Fax 404-524-2992

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission. Changes to the Contract shall not be effective until agreed to, in writing, by both parties.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. Such termination shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Breach. A party shall be deemed to have breached the Contract if any of the following, including but not limited to, occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— Institution shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the Institution shall have available the remedy of Actual Damages and any other remedy available at law or in equity.
- (2) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether the service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) days any requested material from Contractor. The Institution shall make the final and binding determination of the amount.

The Institution may assess liquidated damages against the Contractor for any failure to perform. Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

b. Institution Breach— In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy at law in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed

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by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.5. Institution Ownership of Work Products. The Institution shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the Institution under this Contract. The Institution shall have unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all such work products. The Contractor shall furnish such information and data upon request of the Institution, in accordance with the Contract and applicable state law.
- E.6. Insurance. The Contractor shall maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability Limits of \$100,000. The Contractor shall deliver to the Institution a certificate of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution.
- The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.
- E.7. Competitive Procurements. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.
- E.8. Equipment/Inventory. No equipment shall be purchased under this Contract.
- E.9.. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.
- E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.11. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any laws regarding patents or copyrights which may arise from the performance of this Contract. In any such action brought against the Institution, the Contractor shall



satisfy and indemnify the Institution for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

- E.12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution.

In the event of any such suit or claim, the Contractor shall give the Institution immediate notice thereof and shall provide all assistance required by the Institution in the Institution's defense. The Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.13. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or Institution department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false Statements, or receiving stolen property;
  - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- E.14. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contactor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated as Attachment A.
- If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.
- E.15. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a

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State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a Contractor may make a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

In witness whereof, the parties have by duly authorized representatives set their signatures hereto.

**Alexander Haas Martin & Partners, Inc.**

\_\_\_\_\_  
Title: \_\_\_\_\_ DATE: \_\_\_\_\_

**Middle Tennessee State University**

\_\_\_\_\_  
Sidney A. McPhee, President \_\_\_\_\_ DATE: \_\_\_\_\_

**TBR Approved By:**

\_\_\_\_\_  
Charles Manning, Chancellor \_\_\_\_\_ DATE: \_\_\_\_\_

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Alexander Martin Haas & Partners, Inc.
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

**SIGNATURE & DATE:**

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NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.